

\*\*E-Filed 7/27/2009\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

DANIEL L. BALSAM,

Plaintiff,

v.

ANGELES TECHNOLOGY, INC., et al.,

Defendants.

Case Number C 06-4114 JF (HRL)

ORDER<sup>1</sup> GRANTING MOTION TO  
VACATE JUDGMENT

[re: doc. no 77]

On March 28, 2008, the Court entered default judgment against Defendants Angeles Technology, Inc., Futurecast Media LLC, One World Media LLC, Grant Simmons, and John Solamito (collectively, "Judgment Defendants"), and awarded Plaintiff Daniel L. Balsam \$1,125,000 in statutory damages. Defendant Solamito moves to vacate the judgment for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 60(b)(4). In the alternative, Solamito requests that the Court set aside the judgment pursuant to Fed. R. Civ. P. 60(b)(6) to prevent manifest injustice.

From October 4, 2005 until June 1, 2006, Plaintiff was the recipient of multiple "spam" e-mails promoting various adult websites, including [www.adultactioncam.com](http://www.adultactioncam.com) and

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 www.adultactioncams.com (collectively, the “Websites”). In his first amended complaint  
2 (“FAC”), Plaintiff alleged that Judgment Defendants participated in the operation of the  
3 Websites in violation of California law restricting unsolicited commercial e-mail. Upon  
4 information and belief, the FAC alleged that Solamito and several other individuals were the  
5 corporate officers of the named corporate entities. FAC ¶ 6. The FAC further alleged that  
6 Solamito was the contact (and apparently the corporate officer) for Defendant One World Media  
7 because he was listed as the contact in a January 2003 press release for an alleged affiliate of One  
8 World Media, DateCam.com. *Id.* ¶ 10. No additional allegations were directed at Solamito  
9 specifically.

10 The only named defendant to respond to the FAC was Carolynne Tilga, a former  
11 employee of Judgment Defendants Futurecast Media and One World Media.<sup>2</sup> The allegations  
12 against Ms. Tilga eventually were dismissed for lack of personal jurisdiction. After Plaintiff  
13 voluntarily dismissed all of the remaining parties except for the five Judgment Defendants, the  
14 Court authorized service of the FAC by e-mail. Judgment Defendants did not file a responsive  
15 pleading. The Court then entered default judgment in favor of Plaintiff.

16 On May 19, 2009, the Court issued an order directing the U.S. Marshall to levy a writ of  
17 attachment on a bank account owned by Solamito.<sup>3</sup> Shortly thereafter, Solamito discovered that  
18 a judgment had been entered against him. In support of the instant motion to vacate, Solamito  
19 contends that he has no significant connection to any of the other Judgment Debtors, and that he  
20 had no knowledge of or control over the spam e-mails giving rise to the instant action. Solamito  
21 admits that he performed a limited amount of “contractor” work for Defendant One World Media  
22 in 2004, and that he was paid \$ 1,230.00 for his services, a representation corroborated by a  
23 declaration submitted by Solamito’s accountant. *See* Lourie Dec. Ex. A at 4. However, Solamito  
24 asserts that he never received notice of the instant action through the e-mails sent to the e-mail  
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26 <sup>2</sup> Plaintiff initially filed a complaint in California state court in May 2006. Ms. Tilga  
27 removed the state court action to this Court in June 2006.

28 <sup>3</sup> On July 8, 2009, the Court granted Solamito’s *ex parte* application for an order staying  
execution of the writ pending the resolution of the instant motion.

addresses allegedly affiliated with the Adultactioncam.com website.

Rule 60(b) provides that:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons...

(4) the judgment is void;

...  
(6) any other reason that justifies relief.

Ultimately, a “defendant moving to have a default judgment set aside under Rule 60(b) has the burden of proving that he is entitled to relief.” *See S.E.C. v. Internet Solutions for Bus. Inc.*, 509 F.3d 1161, 1165-66 (9th Cir. 2007). “Absent an abuse of discretion, there is no error in setting aside a default where the judge finds good cause to do so.” *Curry v. Jensen*, 523 F.2d 387, 388 (9th Cir. 1975). In addition, where a default judgment is void for lack of jurisdiction, the district court has no discretion and must vacate the judgment. *See Walker & Zanger (West Coast) Ltd. v. Stone Design S.A.*, 4 F. Supp. 2d 931, 934 (C.D. Cal. 1997) (“where the court lacked personal jurisdiction over the defendant or the requirements for effective services were not satisfied, the default judgment is void and must be vacated.”).

At the hearing on July 24, 2009, Balsam conceded that notice may not have been proper and stated his willingness to litigate the instant action on the merits. Accordingly, IT IS HEREBY ORDERED that Defendant Solamito’s motion to vacate the judgment is GRANTED. The Court’s order of March 28, 2008 is hereby VACATED with respect to Solamito. Solamito shall file a responsive pleading to the FAC within thirty (30) days of the date of this order.

DATED: 7/27/2009

  
JEREMY FOGEL  
United States District Court

1 This Order has been served upon the following persons:

2 Andrew D. Castricone acastricone@gordonrees.com

3 Brian Ted Hafter bhafter@linerlaw.com, mpadilla@linerlaw.com

4 Dana Milmeister dana@garyjkaufmanlaw.com

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